



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/798,064 | 03/11/2004 | Susanne Arney | 10-18-4 | 5680 |

7590 08/26/2010
Michael J. Urbano
1445 Princeton Drive
Bethlehem, PA 18017-9166

| |
|----------|
| EXAMINER |
|----------|

PELLEGRINO, BRIAN E

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3738

| | |
|-----------|---------------|
| MAIL DATE | DELIVERY MODE |
|-----------|---------------|

08/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
After the Filing of an Appeal Brief

Application No.

10/798,064

Applicant(s)

ARNEY ET AL.

Examiner

Brian E. Pellegrino

Art Unit

3738

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 14 June 2010 is acknowledged.

1. ☒ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☒ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☐ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☐ Other:

Note that claim 7 (prior to the amendment) stated the "control devicecapable of releasing said agent or drug...". The amendment to add intervening claims (i.e. claim 7) to claim 8, does not recite that the control device "controls" the drug, but has been changed to "varying said hydrophobicity" and thus the scope has been changed. This is impermissible because it does not simplify issues.

/Brian E Pellegrino/
Primary Examiner, Art Unit 3738